IN THE

Supreme Court of The United States

OCTOBER TERM, 1970

No. 1232

RICHARD L. ROUDEBUSH,

Appellant,

v.

R. VANCE HARTKE, SAMUEL WALKER, JOHN R. HAMMOND, DUGE BUTLER AND THEODORE L. SENDAK, ATTORNEY GENERAL OF INDIANA,

Appellees.

No. 1236

THEODORE L. SENDAK
ATTORNEY GENERAL OF INDIANA,

Appellant,

v.

R. VANCE HARTKE, SAMUEL WALKER, JOHN R. HAMMOND, DUGE BUTLER AND RICHARD L. ROUDEBUSH,

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

MOTION TO DISMISS THE APPEALS AS MOOT

R. Vance Hartke, Appellee herein, moves the Court to dismiss the appeal of Richard Roudebush in Cause No. 1232, and the appeal of Theodore Sendak in Cause No. 1236 on the ground that events occurring after the filing

of the Petitioner's Jurisdictional Statement in each cause have rendered the issues raised by these appeals moot.

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MEMORANDUM IN SUPPORT OF MOTION

The relief sought by Petitioner Roudebush in this appeal as well as in his Indiana state court proceeding in which recount commissioners were appointed (but enjoined from acting by the three judge District Court below) was a recount of the votes for United States Senator in the election of November 3, 1970.

Petitioners Roudebush and Sendak have properly and consistently maintained (See p. 17 Petitioner Sendak's Jurisdictional Statement) that any recount results obtained via the Indiana statute (declared unconstitutional below as to elections for United States Senator) would be merely advisory to the United States Senate. In spite of that position, Petitioner Roudebush did not take any formal action before the United States Senate to contest the right of Appellee Hartke to a seat in the United States Senate, as was done by other disappointed candidates. (Petitions were filed with the Senate Committee on Elections and Privileges, and are currently pending, contesting the elections of Senator Pastore, Rhode Island, and Senator Buckley, New York).

On January 21, 1971, Appellee Hartke was sworn in and seated in the United States Senate, as recited at Congressional Record, January 21, 1971, p. 54. By swearing in and seating Appellee Hartke, the United States Senate "judged" in favor of him as to such election of November 3, 1970, thus exercising its exclusive prerogative under Article 1, Sec. 5 of the United States Constitution. Such swearing in and seating of Appellee by the Senate rendered moot the controversy raised by these appeals.

The Senate having made its determination, the controversy raised by these appeals can no longer be affected by these proceedings, or those of the courts below, either

Federal or State. There is no longer any "immediacy or reality" to this controversy. "The federal courts . . . do not render advisory opinions." *Golden v. Zwickler,* 394 U. S. 103, 108 (1969) citing *United Public Workers of America (C.I.O.) v. Mitchell,* 330 U. S. 75, 89 (1947). Hartke having been seated by the Senate, no "specific live grievance" for presentation of the question of the constitutionality of the Indiana recount statute as applied to a United States Senatorial election remains. See *Golden v. Zwickler, supra,* at p. 110. *Hall v. Beals,* 90 S.Ct. 200, 201 (1969).

The Appellee Hartke therefore prays that these appeals be dismissed as moot.

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